IN THE HIGH COURT OF UTTARANCHAL AT NAINITAL

Original Jurisdiction

Dated: Nainital: the 20th day of December, 2006
Crl. Ist Bail Application No. 1135 of 2006

Order on the Bail Application:
CRIMINAL SIDE

Dr. R.K. Gupta
S/o Sri B.S. Gupta
Managing Director, Neeraj Clinic Pvt. Ltd.,
13/2, Sadanand Marg,
Rishikesh, District Dehradun.

…… Applicant

Versus

State of Uttaranchal …… Opposite Party

Arising out of Spl.	Sessions Trial No. 14 of 2004
Under Sections:	17-B(b) of the Drugs & Cosmetics Act, 1940 read with Rule 97 of the N.D.P.S. Act, 1985, section 3(d) of the Drugs and Magic Remedies (Objectionable Advertisement) Act, 1954 and Section 22(c) read with section vii (a) and c viii (a) Section 2 of the N.D.P.S. Act, 1985.
District:	Dehradun.

Hon'ble Prafulla C. Pant, J.

Heard Mr. K.T.S. Tulsi, Sr. Advocate assisted by Mr. V.B.S. Negi and Mr. Gaurave Bhargava, learned counsel for the applicant and Mr. U.P.S. Negi, Addl. Advocate General assisted by Mr. A. Rab, Addl. Advocate General, for the State.

Applicant Dr. R.K. Gupta, who is in jail in connection with Special Session Trial No. 14 of 2004, relating to offences punishable under Section 17-B(b) of the Drugs and Cosmetics Act, 1940 read with Rule 97 of the Narcotic Drugs and Psychotropic Substances Rules, Section 3(d) of the Drugs and Magic Remedies (Objectionable Advertisement) Act, 1954 and Section 22(c) read with Section 2 (vii) (a) and (c) (viii) (a) of the Narcotic Drugs and Psychotropic Substances Act, 1985, District Dehradun, has sought his release on bail, during the trial.

The applicant, a registered medical practitioner, runs a Clinic under the name and Style Neeraj Clinic Pvt. Ltd. On raids, from the premises of said Company, certain drugs in large quantity were found. It is pertinent to

mention here that the Apex Court has already affirmed bail order passed in favour of the applicant vide its order dated 19.11.2006 in Criminal Appeal No. 672 of 2006, in the connected main case relating to offence punishable under Section 8 / 22 of the N.D.P.S. Act. This case arises out of the supplementary complaint relating to the main case. It is also relevant to mention here that the drugs used for medicinal purposes are exempted under Section 8 of said Act.

It is argued on behalf of the applicant that the entire prosecution is malicious. More than seven co-accused in this case have already been enlarged on bail by the trial court.

It is argued on behalf of the State that the offence under Section 17B read with Section 27 of Drugs and Cosmetics Act is punishable with life imprisonment. However, prima facie, there is nothing which shows that the drugs being sold were spurious which endangered life of any body or which has caused death or grievous hurt to any person. Averments in counter affidavit are without any supporting evidence like postmortem report. The Apex Court has already observed that Section 37 of the N.D.P.S. Act is not applicable to the present case. As for as offence punishable under Section 3(b) read with Section 7 of the Drugs and Magic remedies Act, is concerned, the maximum punishment provided under said Act is one year, while the applicant is already in jail for more than two years.

Having considered all facts and circumstances of the case, particularly, in view of the observations made by the Apex Court in **State of Uttaranchal Vs. Rajesh Kumar Gupta; J.T 2006 (10) Supreme Court pg 8,** which pertains to the present applicant, this Court is inclined to grant the bail.

Without expressing any opinion as to the final merits of the case, it is hereby directed that the applicant be release on bail on his executing a personal bond and furnishing two sureties each of the like amount to the satisfaction of the Special judge, N.D.P.S. Act, Dehradun.

Dt. 20.12.2006 (Prafulla C. Pant, J.)
H.Negi